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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 MICHAEL T. PINES,
12 Booking #15720952,

13 Plaintiff,

14 vs.
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16 Dr. POTTS, Psychologist;
17 Dr. POLICAR, Psychiatrist;
18 PATTON STATE HOSPITAL STAFF,
19 Defendants.

Civil No. 15cv0879 JAH (MDD)

ORDER:

**1) DENYING MOTIONS TO
PROCEED *IN FORMA PAUPERIS*
PURSUANT TO 28 U.S.C. § 1915(a)
[Doc. Nos. 2, 4]**

AND

**2) DISMISSING CIVIL ACTION
FOR LACK OF PROPER VENUE
PURSUANT TO 28 U.S.C. § 1391(b)
AND 28 U.S.C. § 1406(a)**

20 Michael T. Potts (“Plaintiff”), currently detained at the San Diego County Jail
21 (“SDCJ”), and proceeding pro se, has filed a civil rights complaint (“Compl.”) pursuant
22 to 42 U.S.C. § 1983 (Doc. No. 1).

23 Plaintiff claims a Patton State Hospital (“PSH”) psychologist, a PSH psychiatrist,
24 and other unnamed PSH staff entered into several “criminal” conspiracies while
25 evaluating him during state mental competency proceedings, “pending from August 26,
26 2011 until January 2015,” in order to violate his rights to counsel, due process, equal
27 protection, freedom of speech, to be free of cruel and unusual punishments, and in
28 contravention of an “International Peace Treaty with Mexico.” *See* Compl. at 1-4.

1 Plaintiff seeks injunctive relief enjoining Defendants from “facilitating state court
2 proceedings,” as well as \$20 million in general and punitive damages. *Id.* at 10.

3 Plaintiff has not prepaid the civil filing fee required by 28 U.S.C. § 1914(a);
4 instead, he has filed two separate Motions to Proceed *In Forma Pauperis* (“IFP”)
5 pursuant to 28 U.S.C. § 1915(a) (Doc. Nos. 2, 4).

6 **I. MOTIONS TO PROCEED IFP**

7 All parties instituting any civil action, suit or proceeding in a district court of the
8 United States, except an application for writ of habeas corpus, must pay a filing fee of
9 \$400. *See* 28 U.S.C. § 1914(a).¹ An action may proceed despite a plaintiff’s failure to
10 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
11 § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the
12 plaintiff is a prisoner at the time of filing, he may be granted leave to proceed IFP, but he
13 nevertheless remains obligated to pay the entire fee in “increments,” *see Williams v.*
14 *Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), regardless of whether his action is
15 ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d
16 844, 847 (9th Cir. 2002). A “prisoner” is defined as “any person” who at the time of filing
17 is “incarcerated or detained in any facility who is accused of, convicted of, sentenced for,
18 or adjudicated delinquent for, violations of criminal law or the terms or conditions of
19 parole, probation, pretrial release, or diversionary program.” 28 U.S.C. § 1915(h); *Taylor*,
20 281 F.3d at 847.

21 In order to comply with the PLRA, prisoners seeking leave to proceed IFP must
22 also submit a “certified copy of the[ir] trust fund account statement (or institutional
23 equivalent) . . . for the 6-month period immediately preceding the filing of the
24 complaint. . . .” 28 U.S.C. § 1915(a)(2). From the certified trust account statement, the
25 Court assesses an initial payment of 20% of (a) the average monthly deposits in the
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27 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional
28 administrative fee of \$50. *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of
Fees, District Court Misc. Fee Schedule, § 14 (eff. Dec. 1, 2014)). The additional \$50
administrative fee does not apply to persons granted leave to proceed IFP. *Id.*

1 account for the past six months, or (b) the average monthly balance in the account for the
2 past six months, whichever is greater, unless the prisoner has no assets. *See* 28 U.S.C.
3 § 1915(b)(1), (4); *see Taylor*, 281 F.3d at 850. Thereafter, the institution having custody
4 of the prisoner collects subsequent payments, assessed at 20% of the preceding month's
5 income, in any month in which the prisoner's account exceeds \$10, and forwards them
6 to the Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2).

7 While Plaintiff has filed two Motions to Proceed IFP pursuant to 28 U.S.C.
8 § 1915(a), he has not attached a certified copy of his SDCJ trust account statements, or
9 an institutional equivalent, for the 6-month period immediately preceding the filing of his
10 Complaint, to either one of them. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2.
11 Section 1915(a)(2) clearly requires that prisoners "seeking to bring a civil action . . .
12 without prepayment of fees . . . *shall* submit a certified copy of the trust fund account
13 statement (or institutional equivalent) . . . for the 6-month period immediately preceding
14 the filing of the complaint." 28 U.S.C. § 1915(a)(2) (emphasis added).

15 Without Plaintiff's trust account statements, the Court is simply unable to assess
16 the appropriate amount of the initial filing fee which is statutorily required to initiate the
17 prosecution of this civil action. *See* 28 U.S.C. § 1915(b)(1). Therefore, his Motions to
18 Proceed IFP must be DENIED.

19 **II. VENUE**

20 While the Court would normally grant Plaintiff an opportunity to either pay the full
21 filing fee or file a new Motion to Proceed IFP, together with the trust account statements
22 required by 28 U.S.C. § 1915(b)(1), an initial review of his Complaint further reveals that
23 he has filed his case in the improper venue. Venue may be raised by a court sua sponte
24 where the defendant has not yet filed a responsive pleading and the time for doing so has
25 not run. *Costlow v. Weeks*, 790 F.2d 1486, 1488 (9th Cir. 1986).

26 Section 1391(b) of Title 28 of the U.S. Code provides, in pertinent part, that a
27 "civil action may be brought in – (1) a judicial district in which any defendant resides,
28 if all defendants are residents of the State in which the district is located; [or] (2) a

1 judicial district in which a substantial part of the events or omissions giving rise to the
 2 claim occurred, or a substantial part of property that is the subject of the action is
 3 situated[.]” 28 U.S.C. § 1391(b); *Costlow*, 790 F.2d at 1488; *Decker Coal Co. v.*
 4 *Commonwealth Edison Co.*, 805 F.2d 834, 842 (9th Cir. 1986). “The district court of a
 5 district in which is filed a case laying venue in the wrong division or district shall
 6 dismiss, or if it be in the interests of justice, transfer such case to any district or division
 7 in which it could have been brought.” 28 U.S.C. § 1406(a).


8 While Plaintiff is currently detained at SDCJ, all Defendants are alleged to reside
 9 in and to be employed at PSH, which is located in Patton, California, and within the
 10 County of San Bernardino. Moreover, Plaintiff does *not* allege that his claims against
 11 these PSH Defendants arose in either San Diego or Imperial County. Therefore, as
 12 currently alleged, venue would appear to be proper in the Central District of California,
 13 Eastern Division, pursuant to 28 U.S.C. § 84(c)(1), but not in the Southern District of
 14 California, pursuant to 28 U.S.C. § 84(d) (“The Southern District [of California]
 15 comprises the counties of Imperial and San Diego.”). *See* 28 U.S.C. § 1391(b); *Costlow*,
 16 790 F.2d at 1488. Accordingly, the Court also finds dismissal of the action without
 17 prejudice based on its lack of proper venue is appropriate. *See* 28 U.S.C. § 1406(a).

18 **III. CONCLUSION AND ORDER**

19 Accordingly, the Court **DENIES** Plaintiff’s Motions to Proceed IFP (Doc. Nos. 2,
 20 4) and **DISMISSES** this action sua sponte without prejudice based on Plaintiff’s failure
 21 to pay the \$400 filing fee required by 28 U.S.C. § 1914(a), his failure to file a properly
 22 supported Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a), and for lack of proper
 23 venue pursuant to 28 U.S.C. § 1391(b) and § 1406(a).

24 **IT IS SO ORDERED.**

25
 26 DATED: July 27, 2015

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 JOHN A. HOUSTON
 United States District Judge